

REMARKS

The Office Action dated January 6, 2009 has been received and reviewed. Claims 1 to 15 are pending in the application. Claims 1-15 are rejected. Claim 1 is currently amended. Claims 16-19 are new. Support for claims 16 and 17 can be found in the application on page 2, lines 11-17. Support for claim 18 can be found in the application on page 2, lines 30-31. Support for claim 19 can be found in the application on page 2, lines 34-36.

Rejection Under 35 USC 102

Claims 1-10 and 13-15 are rejected under 35 USC 102(b) as being anticipated by Peck et al. US 5,789,173.

Claim 1 is currently amended to include the feature "wherein identifying a micro-organism present in the sample comprises identifying a micro-organism species". Support for the amendment can be found in the application on page 9, line 27, to page 10, line 15. Peck et al. does not teach or suggest identifying a microorganism species. Therefore, claim 1, as amended, is novel over Peck et al. Claims 2-15 each add additional features to claim 1 and are likewise novel over Peck et al.

In amending claim 1, Applicant does not acquiesce to the Examiner's rejection of all original dependent claims. For example, the Examiner alleges that claim 8 is anticipated by Peck et al. Applicant disagrees. Peck discloses the detection of DNA such as the 16S rRNA gene (see, for example, column 5, lines 15-16). Applicant does not find Peck et al. teaches or suggests a process for analyzing a biological sample, comprising the steps of: (a) identifying a micro-organism present within the sample; and (b) determining the effect of one or more antimicrobial(s) on a micro-organism from the sample, wherein determining the effect of one or more antimicrobial(s) comprises adding an antimicrobial at a pre-determined concentration to a sample, incubating the sample in the presence of the antimicrobial for a pre-determined time period under conditions that allow some growth of the micro-organism, and assessing the number of microorganisms in the sample at the end of the

pre-determined time period; wherein steps (a) and (b) are performed by analyzing the micro-organism's nucleic acid; wherein the micro-organism's *RNA is analysed* (emphasis added).

In summary, the rejection of claim 1-10 and 13-15 under 35 USC 102(b) as being anticipated by Peck et al. has been overcome and should be withdrawn.

#### Rejection Under 35 USC 103

Claims 1-10, 12 and 13-15 are rejected under 35 USC 103(a) as being unpatentable over Peck et al. US 5,789,173. Claim 1 is currently amended to include the feature "wherein identifying a micro-organism present in the sample comprises identifying a micro-organism species". As discussed above, Peck et al. does not teach or suggest identifying a microorganism species. Therefore, claim 1, as amended, is not obvious over Peck et al.

Claims 1-11 and 13-15 are rejected under 35 USC 103(a) as being unpatentable over Peck et al. US 5,789,173 in view of Bruno et al. Journal of Molecular Recognition, Vol. 9, 474-479 (1996) cited in IDS. Claim 1 is currently amended to include the feature "wherein identifying a micro-organism present in the sample comprises identifying a micro-organism species". Neither Peck et al., Bruno et al., nor any combination of Peck et al. and Bruno et al. teach or suggest a method of analyzing a biological sample, the method comprising identifying a micro-organism species wherein identifying the microorganism species comprises analyzing the micro-organism's nucleic acid.

In summary, the rejection of claims 1-10 and 13-15 under 35 USC 103(a) as being anticipated by Peck et al. and the rejection of claims 1-11 and 13-15 under 35 USC 103(a) as being unpatentable over Peck et al. in view of Bruno et al. have been overcome and should be withdrawn.

All outstanding objections and rejections are believed to have been met and overcome. If a telephonic conference with Applicants' undersigned representative

would be useful in advancing the prosecution of the present application, the Examiner is invited to contact the undersigned at (651) 736-7430. A notice of allowance for all pending claims is respectfully solicited.

Respectfully submitted,



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